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CURRENT TOPICS

Publication of Chambers Proceedings

THE main grievance ventilated in the article "Heard in Camera" by "a legal correspondent" in *The Times* of 15th May was that, without the verdict of a jury or *habeas corpus* proceedings or any remedy known to the law, a person can be committed for contempt for publishing a report as to the facts of, or even the parties to, proceedings in chambers. That such a publication is contempt was directed by Lord Hewart in 1932, and the writer contrasted that direction with the House of Lords decision in *Scott* v. *Scott* [1913] A.C. 417, that the order that a nullity suit should be heard *in camera* was spent when the case ended. It would follow that publication would be a contempt if it occurred before the case ended, i.e., if an interlocutory matter were dealt with and no final order were made. The writer referred to *Re Beaugeu* [1949] 1 Ch. 230, in which Wynn Parry, J., "solemnly decided, affirming earlier law, that in every case the result of proceedings, however private—even concerning wards of court—might be published." He also referred to *Alliance Perpetual Building Society* v. *Belrum Investments, Ltd., and Dawson* (HARMAN, J., *The Times*, 13th February, 1957), and the *Bilainkin* case (*The Times*, 10th April, 1954), in which, he said, "Lord Hewart's ghost lives on." Although the writer was no doubt a lawyer, we may perhaps hope that it will not too readily be assumed that he has expressed the opinion of all lawyers. Lord Hewart was by no means always wrong, and sometimes was overwhelmingly right, and it is difficult to see why, in the name of authority or common sense, it should be considered unjust to ban publication of interlocutory matters until after final judgment.

Copyright Act, 1956: Date of Operation

THE whole of the Copyright Act, 1956, it was announced by the PARLIAMENTARY SECRETARY TO THE BOARD OF TRADE on 17th May, is to be brought into operation on 1st June, and regulations concerning the exception from copyright in respect of libraries, archives, records and musical works and rules under the section making special exception in respect of industrial designs will be laid before Parliament in the near future. On the same day the LORD CHANCELLOR and the PRESIDENT OF THE BOARD OF TRADE announced that the chairman of the Performing Rights Tribunal established under the Act will be Mr. CLIVE BURT, Q.C. The members will be Mr. W. EVANS (director of Challen Pianos, Ltd.), Dame ALIX MEYNELL and Mr. JAMES A. WALKER (chartered accountant). An article on p. 417 of this issue summarises the changes made by the new Act and indicates how it applies to existing copyright works.

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Police Interrogations

THERE is bound to be a certain amount of disquiet, particularly among those who know something of the workings of the law, as a result of the revelations of a justice of the peace at Dorset Assizes on 17th May as to the manner in which he was questioned by the police. He was charged with stealing a quart of petrol from his employers, and after he had given evidence he was acquitted. A police constable, he said, had told him: "You had better come clean." He thumped the table and said: "We have got a complete set of your dabs on the tin . . . also we have the petrol pump being tested at Blandford for fingerprints. If yours are on it, we've got you cold." In his summing-up, Mr. Justice CASSELS said: "The duty of the police is to bring a man to court. They are not entitled to do anything in the nature of a trial." He said that the long series of questions put to the accused was a type of interrogation not even a court of law would be entitled to administer to a defendant while he was in the dock. In our view proper disciplinary action must be taken in cases of this sort and full publicity must be given to the action which is taken.

Bankruptcy and Deeds of Arrangement

ACCORDING to the Bankruptcy General Annual Report for 1956 (published on 15th May, H.M. Stationery Office, 1s. 6d.), there were 2,136 receiving orders and administration orders in England and Wales in 1956, 27 fewer than in 1955, and 969 fewer than in 1938. The number of receiving orders made on debtors' petitions continues to rise, being 1,119 in 1956 and 1,049 in 1955, this being the first year since the war, according to the Report, in which the number of debtors' petitions exceeded that of creditors' petitions. "To this extent," the Report says, "bankruptcy seems to be returning to its pre-war pattern." The total liabilities in all bankruptcies, as estimated by debtors, was £6,667,698, being £58,620 more than in 1955 and £28,628 less than in 1938. Net estimated deficiencies averaged £2,136, as against £2,368 in 1955. There were 96 prosecutions for bankruptcy offences reported by official receivers, 14 more than in 1955 and more than in any previous year. There were 40 offences of failing to keep proper accounts (s. 158 (1)) and 30 of obtaining credit to the extent of £10 while undischarged (s. 155 (*a*)). There were 10 appeals by debtors to the Divisional Court and to the Court of Appeal, 8 of which were dismissed. The pattern of failures in the principal trades or professions follows that for 1955, but failures among retail grocers and provision merchants have risen from 74 in 1955 to 121 in 1956. Builders, farmers and company directors still contribute large quotas to the bankruptcy figures. Against "Law: barristers, solicitors, etc." only 10 orders were made, less than one-half per cent. of the total.

Bribery Prevention

ON the 30th October, 1906, a meeting of sixteen persons in a London hotel started the Bribery Prevention League. To-day there are more than 400 members, but only six of them found it possible to attend the fiftieth meeting of the League, presided over in London on 7th May by LORD CARISBROOKE. Lord Carisbrooke deplored the apathy of the public, and said that bribery was not dead. There were for example eight convictions last year for attempting to bribe driving examiners, and twelve convictions for attempting to bribe police officers. Convictions for the year fell from forty-six to thirty-four. It may be that this does not so much betoken a return to grace as a decline in the zeal and vigilance necessary to keep clean the wells of commercial life. The custom of buying favours with gifts is very ancient, and it still taints both commerce and the professions, as everyone who does not go about with his eyes shut knows.

Building Societies

PART 5 of the Report for 1956 of the Chief Registrar of Friendly Societies (H.M. Stationery Office, 3s.), published on 13th May, 1957, relates to building societies and states that withdrawals of capital amounting to £329 millions were again the highest ever experienced in one year and represented over three-quarters of the new capital subscribed which, at £425 millions, was £6 millions below the record figure of the previous year. Nevertheless the total assets again increased and by the end of the year had reached £2,234 millions, an increase in ten years of 155 per cent. The net increase in capital subscribed by shareholders and depositors during 1956 (including accrued interest) was £158 millions. If repayments of principal by borrowers, amounting to approximately £206 millions, are added, a total amount of £364 millions is arrived at as the total additional capital that became available to building societies during the year. Advances on mortgage totalled £339 millions and, although this amount was below the record figure of £394 millions advanced in the previous year, it nevertheless represented an increase of 80 per cent. over the figure for 1946. The average amount of each advance in 1956 was £1,218 as compared with £1,152 in the previous year. The total amount outstanding on mortgages increased from £1,752 millions to £1,882 millions. On nearly two-thirds of the 2,058,000 mortgage accounts the outstanding debt was less than £1,000. The average mortgage debt was £914, an increase of £38 on the previous year.

Hire-Purchase Economics

THE announcement of the decision to appoint a Committee to examine the country's monetary and credit system has already led to the airing of views, orthodox and otherwise, on certain aspects of present-day economics. The system of hire-purchase has always been an easy target for the critics, but Mr. T. M. BLAND, who was re-elected President of the Institute of Bankers on 8th May, came out as a supporter of this maligned method in his Presidential address to the Institute. He said he appreciated why hire-purchase was a victim of the credit squeeze, but in times of full employment hire-purchase within reason was normally to be encouraged on social and economic grounds. He continued: "I have never been very clear why, though the purchase of a house by instalments over many years has always been accepted as something wholly desirable, the purchase of the contents, no less necessary to its enjoyment, and to its economical enjoyment, by instalments spread over much shorter periods should, at least until recently, have been regarded as the first step in the rake's progress. I should have thought that the physical possession of something that adds to the pleasure of life, and a monthly charge to meet its cost, combine to form a stabilising influence and an inducement to hard work and abstinence more compelling than any poster advertisement of the virtue of thrift."

THE COPYRIGHT ACT, 1956

THE Copyright Act, 1956, was passed on 5th November, 1956, and it has been announced that it will be brought into operation on 1st June next (see p. 415, *ante*). As from its commencement the Copyright Act, 1911 (save for certain sections dealing with libraries), will be repealed and also the Musical Copyright Acts of 1902 and 1906 and the remaining sections of the Fine Arts Copyright Act, 1862, left unrepealed by the Act of 1911. It may be recalled that the Copyright Act, 1911, was passed on 16th December, 1911, and was brought into operation in the United Kingdom on 1st July, 1912.

The general framework of the Act of 1956 is to define " copyright " (in s. 1 (1)) as the exclusive right to do and authorise other persons to do acts designated " acts restricted by the copyright " in relation to different classes of works. By s. 1 (2) copyright in a work is infringed by any person who without the licence of the owner does or authorises a restricted act in respect of the work. The acts restricted by the copyright in various classes of works are then set forth in the different sections dealing with the several classes. Thus the acts restricted by the copyright in literary, dramatic or musical works are set forth in s. 2 (5), in artistic works by s. 3 (5), in sound recordings by s. 12 (5), in films by s. 13 (5), in television and sound broadcasts by s. 14 (4), and in published editions by s. 15 (3). This is somewhat different from the Act of 1911, in which the acts constituting an infringement of all classes of works protected thereby were set out in one definition in s. 1 (2).

Application

The Act of 1911 extended throughout Her Majesty's Dominions, including, as a result of steps taken by their respective Legislatures, the self-governing dominions. The Act of 1956 primarily extends to the United Kingdom only but may be extended by Order in Council to the Isle of Man, the Channel Islands and the Colonies. The Act of 1956 cannot " extend " to the self-governing dominions, although, as in the case of a foreign country, protection may be afforded by Order in Council to works originating in such dominions.

The Act of 1911 protected works first published in H.M. Dominions or in a foreign country in respect of which an Order in Council had been made and unpublished works of which the author was a British subject or resident or the subject of or resident in such a country. The Act of 1956, while giving similar protection to unpublished works, gives an alternative ground of protection to published works so that they will be protected even though not first published in the United Kingdom or a protected country if the author qualification applies. The Act introduces a new definition, " qualified person," to define the class of persons whose works will be protected. It should be observed that paras. 39 and 40 of Sched. VII to the Act of 1956 contain provisions designed to secure that works originating in countries to which the Act of 1911 extended or in respect of which Orders in Council had been made under the Act of 1911 shall remain protected here notwithstanding the repeal of the Act of 1911 until new Orders in Council can be made under the Act of 1956. Since at the time of going to press only a little over a week remains before the Act comes into force, it seems likely that there will not be time to make the necessary Orders in Council before its commencement and these provisions may therefore be of considerable importance for some time.

New subject-matter for protection

The most obvious innovations introduced by the Act of 1956 are the new subject-matters for copyright protection in Pt. II of the Act and the provisions of Pt. IV setting up a Performing Right Tribunal.

The new subject-matter for protection consists of sound recordings, cinematograph films, television broadcasts and sound broadcasts, and published editions. Gramophone records and similar contrivances were protected under s. 19 (1) of the Act of 1911 " as if they were musical works." What is now protected is the aggregate of sounds embodied in a record other than a soundtrack of a film, such soundtracks being now protected as part of the film itself. It had been held in *Gramophone Co., Ltd.* v. *Carwardine and Co.* [1934] 1 Ch. 450 that the protection given by the Act of 1911 to records included a right to restrain their performance in public. This right is continued in respect of sound recordings, except where the performance takes place at residential premises or as part of the activities of clubs and charitable or social organisations. Details of this restriction are to be found in s. 12 (7).

Under the Act of 1911 cinematograph films were protected either as dramatic works or as a series of photographs, but they are now protected in their own right for a period of fifty years from registration under the Cinematograph Films Act, 1938. When the copyright in the film expires the exhibition of the film will not only not be an infringement of copyright in the film, but will not be an infringement of copyright in any literary, dramatic, musical or artistic work incorporated in the film (s. 13 (7)).

The television and broadcasting right is conferred on the British Broadcasting Corporation and the Independent Television Authority in respect of their broadcast performances and restricts their reproduction without licence by means of films or records and, in the case of television broadcasts only, makes it an infringement to perform to a paying audience. Performances to residents or members of clubs or organisations are again excluded.

The right given to published editions is novel and is intended to prevent unauthorised persons reproducing by photographic process publications of non-copyright material.

It should be noted that the rights conferred in respect of these new subject-matters are additional to the rights conferred by Pt. I of the Act in respect of literary, dramatic, musical and artistic works and are mutually independent, so that a reproduction or performance may constitute an infringement of separate rights subsisting in a number of different subject-matters. For example, a public performance of a television film might involve an infringement of the television right ; of dramatic rights in the play televised ; of the film rights, if the play is in itself a film ; of musical copyright in accompanying music ; and of sound recording rights, if the music is recorded. This duplication of rights is to some extent restricted in s. 40 of the Act where films and sound recordings are broadcast.

The Performing Right Tribunal

The Performing Right Tribunal (the first members of which are named elsewhere in this issue : see p. 415, *ante*) will be concerned only with disputes with " licensing bodies." These are defined as meaning societies or organisations for the

negotiation of licences for public performances including the British Broadcasting Corporation and the Independent Television Authority, but do not include organisations granting individual licences for the performance of literary, dramatic or musical works. The Performing Right Society would therefore be a licensing body, but not a publisher carrying on the business of granting licences for the performance of individual plays. The tribunal will have two main purposes, of which the primary one is the variation or approval of " licence schemes," namely a form of general tariff setting out the terms upon which licences will be granted for public performances of different kinds and by different classes of persons. There is further provision for application to the tribunal by persons who require a licence from a licensing body and either a licence has been refused in accordance with an existing licence scheme or no relevant licence scheme exists. The general effect of these provisions is that where anything is done in accordance with a licence scheme approved by the tribunal or an order made by the tribunal, it will not be an infringement of copyright.

Industrial use of designs

Another major change introduced by the Act of 1956 is in regard to designs. By the Act of 1911 the question whether an artistic work was protected under that Act or under the Designs Act depended upon the intention of the artist at the time he created the work. If his intention was to create an industrial design then the work was not protected under the Copyright Act and could not be protected under the Designs Act unless it was registered prior to publication in any form. On the other hand, if the original intention was artistic only, subsequent industrial user did not affect protection under the Copyright Act. Under the Act of 1956, the original intention is immaterial, and any artistic work will enjoy protection under that Act unless and until there is an industrial user with the consent of the copyright owner. But once there is such an industrial user protection in respect of such user can only be obtained under the Designs Act. As a consequence of this change the Act of 1956 amends the Designs Act, 1949, by providing that registration under that Act may be obtained notwithstanding previous publication as an artistic work.

Miscellaneous provisions

There are a number of minor modifications of the law. The various terms of copyright run from the end of the calendar year in which the event happens and not from the event itself, and this provision applies to existing works. The copyright in joint works is now until fifty years from the death of the author who dies last and not, as under the Act of 1911, fifty years from the death of the author who dies first; this provision applies to existing works where the copyright has not already run out.

There are a number of minor alterations in the " fair dealing " provisions, of which perhaps the most important is to authorise quotation for the purposes of criticism not only of the work criticised but of another work. There are also somewhat elaborate provisions entitling public libraries to make copies of works, but the details of these provisions will not be apparent until the relevant regulations have been issued.

The special three-year period of limitation of actions has been abolished so that the ordinary rule in respect of actions for tort now applies. There is also a new limitation on the measure of damage for conversion of infringing copies where the defendant had reasonable grounds for believing that they were not infringing copies.

An important new provision affecting title to copyright is that it will now be possible to assign the copyright in a work not yet in existence with the effect that the copyright on the work coming into existence will automatically vest in the assignee. Under the present law, such an assignment would have taken effect in equity only so that the author was a necessary party to an action for infringement.

Existing works

The effect of the Act of 1956 with regard to existing works is too complicated to be summarised and is set out in the forty-nine paragraphs of Sched. VII to the Act. Substantially, however, the effect is that the Act of 1956 is treated as applying to existing works in exactly the same way as it applies to new works but any devolutions of title which had effect prior to the commencement of the Act of 1956 in accordance with the provisions of the Act of 1911 will be treated as having the corresponding effect with regard to the rights existing under the Act of 1956. For example, an assignment made before the commencement of the Act of 1956 by an author automatically reserved to his personal representatives the last twenty-five years of the term, and this reservation will continue to apply to the term created under the Act of 1956, though such an assignment made after the commencement of that Act would no longer create this reversionary term. On the other hand, the right under the proviso to s. 3 of the Act of 1911 to reproduce on compulsory terms is abolished unless notice has been given under that proviso before the commencement of the Act of 1956. The details of Sched. VII, however, will require careful study as they apply to individual cases, since they not only distinguish the circumstances in which the provisions of the Act of 1911 and the Act of 1956 will apply to existing works but in some instances apply the Act of 1911 in an amended form.

F. E. Skone James.

"THE SOLICITORS' JOURNAL," 23rd MAY, 1857

The Solicitors' Journal on the 23rd May, 1857, published the obituary of Mr. James Freshfield: " By the decease of this able and indefatigable lawyer, at the age of 56 years, the profession has lost one of its most distinguished members, and a career of great and well-deserved success has prematurely closed. It is known to all our readers that the late Mr. James Freshfield was a man of remarkable abilities, of unwearied industry and intense devotion to business; and that he had enjoyed throughout his life the best opportunities of displaying the great capacity he possessed. We believe that in the City the professional reputation of the deceased was almost unrivalled. He had a mind of rare judicial power and upon all questions of mercantile law there was no sounder authority . . . But it was as the confidential adviser of the Bank of England that this eminent lawyer was best known . . . He was appointed Solicitor to the Bank jointly with his father in the year 1830, and ten years afterwards, on the retirement of the elder Mr. Freshfield, the appointment was renewed to the deceased jointly with his brother Mr. Charles Freshfield . . . To advise the Bank upon all questions that needed the opinion of a lawyer during the commercial vicissitudes of so long a period was the work of no ordinary intellect. There can be little doubt that Mr. Freshfield sacrificed health and life by excessive devotion to the profession in which he had made himself so eminent . . ."

CALLING ACCUSED TO GIVE EVIDENCE

AN unusual feature of the recent *Adams* case at the Old Bailey was that the accused did not elect to give evidence. The procedure is governed by the Criminal Evidence Act, 1898, s. 1, which provides that every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings whether the person so charged is charged solely or jointly with any other person. There are certain provisos to the section, those with which this article is concerned being that the person so charged shall not be called as a witness in pursuance of the Act except upon his own application and that the failure of any person charged with an offence, or of the wife or husband as the case may be of the person so charged, to give evidence shall not be made the subject of any comment by the prosecution. Though the prosecution may not comment, it has been held that there is no such restriction on the court, although any observations made must be restrained and made with great care. The Act applies to all criminal proceedings in courts of summary jurisdiction as well as in courts trying offences on indictment, and whether the proceedings are in respect of offences punishable summarily or only on indictment, and whether the proceedings are under Acts under which the defendant might previously to the Act of 1898 give evidence on his own behalf or not: *Charnock* v. *Merchant* (1900), 16 T.L.R. 139. It follows that justices have the same rights of comment as in the High Court, and must be guided by the various authorities on the extent to which such comments may be made. Of course, there is no summing-up in magistrates' courts, and it may be thought that there is never any need to make any comment on a defendant's failure to give evidence. On the other hand, any court should be prepared to indicate the reasons that prompt it to arrive at the decision it does, and the authorities show that proper comments are permissible and may be desirable.

Discretionary

The Judicial Committee of the Privy Council considered the matter in *Kops* v. *R.* (1894), 10 T.L.R. 525, which was an application for special leave to appeal from a decision of the Supreme Court of New South Wales, as to validity of a conviction for arson. The judge, in his address to the jury, commented on the fact that the prisoner had not been called to give evidence. After the verdict, a case was reserved for the opinion of the Supreme Court whether this comment of the judge vitiated the verdict. The court of seven judges, by a majority of five to two, held that the judge acted rightly. Before the Privy Council, it was contended for the petitioner that it was contrary to justice for the judge to bias the jury by commenting on the fact that the prisoner did not give any evidence as he might have done. It was held that there is nothing wrong in the judge calling the attention of the jury to the fact, and their lordships saw no reason to doubt the correctness of the conclusion at which the majority of the learned judges arrived. They did not lay down—it was not within the scope of the case necessary to lay down—any general rule as to such comments. It was intimated that there may no doubt be cases in which it would not be expedient or calculated to further the ends of justice—which, undoubtedly, regards the interests of the prisoner as much as the interests of the Crown, who are prosecuting—to call attention to the fact that the prisoner had not tendered himself as a witness, it being open to him either to tender himself or not as he pleased. But on the other hand, there are cases in which it appears that such comments might be both legitimate and necessary.

In *Waugh* v. *R.* (1950), 66 T.L.R. (Pt. 1) 554, whilst agreeing that it is a matter for the judge's discretion whether comment shall be made on the fact that a prisoner has not given evidence, the Privy Council emphasised that the very fact that the prosecution are not permitted to comment shows how careful a judge should be in making such comment, and in that case allowed an appeal against conviction and sentence of death passed by the Supreme Court of Jamaica. The Privy Council were of opinion that the judge's repeated comments on the appellant's failure to give evidence might well have led the jury to think that no innocent man could have taken such a course. Lord Oaksey said: " The question whether a prisoner is to be called as a witness in such circumstances and on a murder charge is always one of the greatest anxiety for the prisoner's legal advisers, but in the present case their lordships think the prisoner's counsel was fully justified in not calling the prisoner, and the judge, if he made any comment on the matter at all, ought at least to have pointed out to the jury that the prisoner was not bound to give evidence and that it was for the prosecution to make out the case beyond reasonable doubt." In *R.* v. *Rhodes* (1899), 15 T.L.R. 37; 43 SOL. J. 45, the Court for Crown Cases Reserved emphasised that the matter was one for the judge's discretion—and, it follows, for the discretion of the magistrates in summary cases. Lord Russell, L.C.J., said: " I am clearly of opinion that he had such a right; there is nothing in the Criminal Evidence Act to take away his right. The extent to which such observations should be made, and whether they should be made at all, must rest on the discretion of the judge. We cannot formulate a rule as to when the judge shall make use of his discretion, the wise use of such discretion depends on the special circumstances of each particular case."

The Adams case

Whether the case is one of murder or of riding a bicycle without a light the burden of proof lies on the prosecution, and in every case the defendant enjoys the right of giving evidence or not as he pleases. In his summing up, as reported in *The Times* of 9th and 10th April, Devlin, J., put the accused's position to the jury in the following way: " It was perhaps a natural reaction to ask why he had not gone into the witness box and say ' If he is an innocent man and is the doctor who attended the patient throughout, he can tell us more about this than anyone else can. Why has he not gone into the witness box unless he thinks that questions may be put to him that he could not satisfactorily answer ?' The jury might have found defence counsel's reasons for Dr. Adams not giving evidence convincing, or they might not, but it did not matter. Dr. Adams had the right not to go into the witness box. It would be utterly wrong if they were to regard Dr. Adams's silence as contributing in any way to proof of guilt. It did not and it could not . . . he stood on his rights and did not speak." Devlin, J., continued: " I have made it quite clear that I am not criticising that. I do not criticise it at all and I hope the day will never come when that right is denied to any Englishman. The law on this matter reflects the natural voice of England and it always has—our horror at the idea that a man might be questioned and forced to speak and perhaps forced to condemn himself out of his own mouth. We afford to everyone at the beginning

and at every stage and to the very end the right to say: 'Ask me no questions, I shall answer none; prove your case.' "

Inadvertent comment by prosecution

Contrary to the provisions of the section, in *R.* v. *Dickman* (1910), 26 T.L.R. 640, comment was made by counsel for the prosecution in the course of his speech to the jury, when dealing with one incident of the case, that the prisoner's wife had not been called; he said that her evidence might have been of great importance. However, before the jury considered what their verdict was to be, he withdrew his observation in the presence of the jury. The judge did not comment on the matter in his summing up, but when the matter was brought to his notice he asked the jury to pay no attention to the observation of learned counsel. Lord Alverstone, C.J., on appeal, said that it was quite impossible to take the view that there had been a mistrial on that ground. No one of the cases to which counsel (for the appellant) had referred established, or went near to establishing, that there had been a mistrial where such an observation had been made. It was one of those accidental slips which must occasionally arise, and it was most honourably repaired, and its effect must have been entirely removed by the comment of the judge. Such a thing is not likely to happen very often, but should it do so before justices they would, on the authority of this case, be entitled to continue the proceedings if they intimated that no regard was being paid to the comment and it had no effect upon their deliberations. There would be no justification in suggesting that the trial was a nullity on that ground.

Not corroboration

The failure of a prisoner to go into the witness box to give evidence cannot amount to corroboration of the evidence of an accomplice: *R.* v. *Jackson* [1953] 1 W.L.R. 591; 97 Sol. J. 265; *per* Lord Goddard, C.J.: " One cannot say, because a prisoner has not gone into the witness box to give evidence, that that of itself is corroboration of the evidence of accomplices. It is a matter which the jury could very properly take into account and very probably would, but it is not a right direction to give to a jury, and it should be clearly understood that it is wrong in law."

J. V. R.

Company Law and Practice

ABSENT DIRECTORS

Hayes v. *Bristol Plant Hire, Ltd., and Others* [1957] 1 W.L.R. 499; *ante*, p. 266, is of interest because the facts in that case direct attention to three points of similarity in Table A in the First Schedule to the Companies Act, 1948. These points are: (1) the articles of the company did not require a director to have any qualification shareholding in the company; cf. Table A, art. 77: " The shareholding qualification for directors may be fixed by the company in general meeting, and unless and until so fixed no qualification shall be required." (2) The articles provided that directors were to be paid as remuneration such sums as the company in general meeting might from time to time prescribe; cf. Table A, art. 76: " The remuneration of the directors shall from time to time be determined by the company in general meeting." (3) The plaintiff complained that at meetings of the board of directors at which he was not present he had been wrongfully expelled from his office of director on the alleged ground of absence from board meetings. There is an indication in the report that the articles of the company had a similar provision to art. 88 (*f*) of Table A, which is: " The office of director shall be vacated if the director shall for more than six months have been absent without permission of the directors from meetings of the directors held during that period."

Of the three references to Table A it may be noted that art. 77 is new; Table A in earlier Companies Acts had required a director to hold at least one share in the company. Article 88 (*f*), which provides for vacation of office for absence without permission, is also new.

Hayes v. *Bristol Plant Hire, Ltd.* is only reported on a preliminary point as to whether the plaintiff had a sufficient proprietary interest to maintain an action for declarations that the resolutions expelling him and appointing another director in his place were invalid and inoperative, and for consequential injunctions. Wynn Parry, J., held, applying *Pulbrook* v. *Richmond Consolidated Mining Co.* (1878), 9 Ch. D. 610, that the director had a sufficient proprietary interest.

Absence and permission

Attention having been directed to Table A, art. 88 (*f*), the opportunity may be taken to consider some of the circumstances in which the provisions of the article might operate.

The article provides that office is to be vacated if the director shall have been absent. It was held in *Re Bodega Co., Ltd.* [1904] 1 Ch. 276 that, where the articles name an event (or events) in which a director shall vacate office, the office becomes vacant when the event arises. The board cannot waive the effect of the article. In the case of absence the event is absence for six months without permission, so it would seem that permission does not necessarily have to be given before the absence commences, but may be given at any time before the period of six months has expired. However, notwithstanding the principle that the board cannot waive the effect of the article, if the directors have power to fill casual vacancies (as in Table A, art. 95) there seems no reason why, if they should so wish in a proper case, they should not reappoint the director vacating office to fill the casual vacancy that arises.

In *Re London & Northern Bank; Mack's Claim* [1900] W.N. 114, it was held, in dealing with an article not dissimilar to art. 88 (*f*), that " absence " meant voluntary or deliberate absence. This would presumably exclude, for example, absence abroad on the company's business even if no formal permission had been given, and always assuming such absence was *bona fide* but not necessarily absence abroad if due to ill-health. In, *Re McConnell's Claim* [1901] 1 Ch. 728, it was held that the period of absence does not begin to run until a meeting has been held which the director ought to have attended, a point which may be of importance where board meetings are infrequent. The absence dates from the first meeting which the director fails to attend.

Permission of the directors should normally be given by means of a formal resolution recorded in the minutes, but strict formality is not essential if permission has in fact been given. The burden of proving permission would, presumably,

rest on the director, so it is to his advantage to ensure that a proper minute is prepared. Permission may, presumably, be implied, as, for example, where the directors decide to send one of their number abroad in connection with the company's business.

Proprietary interest

Absence and permission seem essentially questions of fact, which probably explains the dearth of reported cases on articles similar to art. 88 (*f*) of Table A, a clause which, although new to Table A, was not uncommon in the special articles of companies incorporated before the Act of 1948 came into force.

The importance of *Hayes* v. *Bristol Plant Hire, Ltd.* lies in the decision that, even where no qualification shares are necessary and remuneration is unspecified and in the discretion of the company, a director has a sufficient proprietary interest to enable him to pursue an action for relief by way of declaration and injunction against his exclusion from the board. His proprietary right arises as the article providing for remuneration gives the man who is a director a right, if the company decide to pay the directors in any year for their services, to share in that remuneration. It is, however, arguable that the position might be different if the article providing for remuneration took the not uncommon form of the company awarding the directors a lump sum to be divided among themselves in such manner as they may decide.

H. N. B.

Common Law Commentary

"EVERY DANGEROUS PART . . ."

FEW sections are simpler in form than s. 14 (1) of the Factories Act, 1937: "Every dangerous part of any machinery . . . shall be securely fenced"; and few have been more fruitful of litigation—with the consequent risk of confusion between different lines of authority.

Direct contact with dangerous part

Beginning with *Nicholls* v. *F. Austin (Leyton), Ltd.* [1946] A.C. 493 and ending with *Bullock* v. *G. John Power (Agencies), Ltd.* [1956] 1 W.L.R. 171 and *Kilgollan* v. *William Cooke and Co., Ltd.* [1956] 1 W.L.R. 527, it has now been established that an employer's duty under the section, to fence every dangerous part of the machine against the risk of contact, does not extend to fencing against the risk of injury from dangerous *material* ejected from the machine. On the other hand, the risk of injury from a *part* of the machine which is itself ejected falls within the section and must be guarded against; in the words of Denning, L.J., in *Dickson* v. *Flack* [1953] 3 W.L.R. 571, 580, "any part which may be expected to throw off a loose part is itself a dangerous part and ought to be securely fenced." The real object of the section is perhaps best indicated by its proviso, which describes an automatic guard as sufficient if it "prevents the operator from coming into contact with the part"; it is direct contact, however caused, between the operator and the dangerous part which the section seeks to prevent. By the same test the workman failed to establish a breach of the statute in *Kelly* v. *Steel Co. of Scotland* (1956), 73 Sh. Ct. Rep. 54, when a tool, with which he was manipulating a piece of steel through a rolling mill, caught in an unfenced roller and was thrown against his chest.

There is, however, some danger of confusion if the cases which we have noticed—and which are concerned to define the class of injuries which the legislation was designed to prevent—are relied upon to answer a different question: Is a particular part of machinery dangerous or not? Three recent cases illustrate the point.

Dangerous combination of machinery and material

In *Lewis* v. *High Duty Alloys, Ltd.* [1957] 1 W.L.R. 632; *ante*, p. 373, the plaintiff was oiling an automatic planing machine when his left arm was crushed between a portion of the machine, known as a V-slide, and the block of metal which was being planed therein. Ashworth, J., took the view, in these circumstances, that the danger only arose because of the conjunction of the V-slide with the material which was being worked by the machine, and he did not then regard the V-slide, "taken by itself," as a dangerous part of the machine. It might be, he felt, that, although s. 14 (1) covers parts of the machine and the paragraph at the end of s. 14 (3) covers articles or materials, there was a statutory gap and no statutory obligation was imposed where the danger arose *indirectly* through the conjunction of part of the machine with some part of the materials. He went on, however, to find for the plaintiff at common law.

An opposite view on the statutory point was taken both by Finnemore, J., in *Lenthall* v. *Grimson & Co. (Leicester), Ltd.* (unreported) and by Lynskey, J., in *Hoare* v. *M. & W. Grazebrook, Ltd.* [1957] 1 W.L.R. 639; *ante*, p. 373: in the latter case the plaintiff, while working at a vertical boring machine, was injured in the "nip" created between the fixed boring bar and the rotating material which was being operated upon. It was held that the defendants were in breach of their statutory duty since the boring bar together with the material that was being worked constituted a dangerous part of machinery; the test, thought Lynskey, J., was not whether the part was dangerous in itself but whether the operation of the machine made it dangerous. He also indicated that a non-moving part of machinery could equally be regarded as dangerous; for s. 16 of the Act provides for the operation of s. 14 whenever the machinery is "in motion or *in use*"—which plainly argues that a piece of machinery may be regarded as "in use" even if it is not itself in motion.

It is respectfully submitted that the view of Lynskey and Finnemore, JJ., should be preferred to that of Ashworth, J. It accords more closely with such cases as *Fowler* v. *Yorkshire Electric Power Co., Ltd.* [1939] 1 All E.R. 407, where the track-wheel of an overhead crane was regarded as a dangerous part (within s. 10 (1) (*c*) of the Factory and Workshop Act, 1901) by reason of its movement in relation to the rail on which it ran. Similarly in *Smithwick* v. *National Coal Board* [1950] 2 K.B. 335 a conveyor roller was regarded as dangerous because of the nip which it formed with the conveyor belt;

the nip was not itself a dangerous part—but the roller in juxtaposition to the moving conveyor.

The correct test, it is suggested therefore, is to determine whether or not a part is dangerous (when " in motion or in use ") by considering dangers created by the part not only in itself but also in relation to materials being worked in the machine, to other parts of the machine and, indeed, in relation to any other object.

R. E. G. H.

A Conveyancer's Diary

BENEFICIARY DISQUALIFIED BY MANSLAUGHTER OF TESTATOR: DESTINATION OF GIFT

THERE are two points of similarity between the cases of *Re Peacock* [1957] 2 W.L.R. 793, and p. 339, *ante*, and *Re Callaway* [1956] Ch. 559 (which formed the subject of an article in this Diary nearly a year ago—see 100 SOL. J. 482). In both cases a person who otherwise would have taken a benefit under a testator's will forfeited that benefit by being proved to have feloniously killed the testator, and the court was asked to decide to whom that benefit had in the circumstances passed. And in both cases the learned judge who had to determine that question did so in reliance on authority, and to a greater or lesser extent against his own judgment. As so often happens when a judge does not feel himself free to follow his own instinct in deciding a case, the decisions in these cases lack conviction.

Re Callaway

In *Re Callaway* the testatrix, who had two children, a son and a daughter, by her will gave her whole estate to the daughter. The daughter and her mother were both found dead from coal-gas poisoning in circumstances which, it was accepted by the court, indicated that the daughter had murdered her mother and had then committed suicide. It is, of course, established beyond all possibility of dispute that a person who has caused the death of another by his felonious act can take no benefit which would otherwise have accrued to him as a result of that other's death. The daughter's estate could not, therefore, take the mother's estate or any part of it, either under the will or under the laws of intestacy or in any other way. Three possible alternative destinations for the estate were considered. The first was suggested by the learned judge himself: it was that the mother's estate first passed under the will to the daughter, and then as the daughter's estate was disqualified from taking, to the Crown as *bona vacantia*. The second was that the estate passed as undisposed of to the son, the only next of kin not disqualified from taking a benefit in the estate. The third was that the estate first passed in the normal way to the son and the daughter as next of kin, but that the daughter's share then passed to the Crown as *bona vacantia*. This last was the view argued for by the Crown, which for the first time in a case involving this kind of dispute was represented to state its case. The Crown's view did not, however, prevail; Vaisey, J., held that the son was, on authority (which he thought was far from satisfactory), entitled to the whole estate.

Re Peacock

In *Re Peacock* the testator gave his residuary estate upon trust for his wife, his step-son and his son by a former marriage (naming each one of them) if they should survive him, " and if more than one in equal shares as tenants in common absolutely and if only one then the whole to that one." This gift was not precisely a class gift, but for the purposes of the question which arose it was treated as such by the court: " . . . so far as lapse is concerned the testator had made it abundantly clear that this gift is tantamount to a class gift. It is a gift to a 'group,' to adopt the word used by Maugham, J., in *Re Woods* [1931] 2 Ch. 138, but for the purposes of lapse it has the characteristics of a class gift."

The wife was found guilty of the manslaughter of the testator, and the question then arose what was to happen to her share in the estate. It was clear that she could not take it, and she was not made a party to the summons which was issued to hear this question determined. Disheartened, perhaps, by its lack of success in *Re Callaway*, the Crown made no application to be joined, and the contest was thus between the step-son and the son. Did the share of residue given to the wife lapse and fall to be dealt with as on an intestacy, so that the testator's son took two-thirds of the estate and his step-son one-third; or ought the usual rule applicable to class gifts in the event of a lapse of the gift to one member of the class to be applied, and the residue accordingly divided between the son and the step-son equally? The point was not covered by direct authority, and Upjohn, J., expressed a personal inclination for the first of these two conclusions. On this view, the actual facts should be looked to; it would then be found that in fact as the wife survived the testator her share had not lapsed, but, as she was incapable on grounds of public policy of taking it, it was necessarily undisposed of.

Public policy

The principle of public policy was referred to by Fry, L.J., in his judgment in *Cleaver* v. *Mutual Reserve Fund Life Association* [1892] 1 Q.B. 147 (a case which arose out of the Maybrick murder), when he said that this principle " must be applied as often as any claim is made by the murderess, and will always form an effectual bar to any benefit which she may seek to acquire as the result of her crime." A method of applying this principle is to see what claim the felon can establish, and when it is established public policy steps in and acts as a personal bar. An analogous case of disqualification arises, as Upjohn, J., observed, where a legatee has witnessed the will, and he instanced the case of *Aplin* v. *Stone* [1904] 1 Ch. 543, in which, upon construction, there was a gift to *A* if living at the death of the testator's wife and otherwise over, and it was held that *A* having witnessed the will was disqualified, but that as he was living at the death of the testator's wife the gift over did not operate and there was an intestacy. The rule in these cases is, first, to construe and see what interests are given in the events which have happened, and then to apply the personal disqualification.

Special position of class gifts

The different result reached in *Re Peacock* was due to the fact that, in the case of the personal disqualification which arises from a legatee witnessing the will, the rule is different where the gift is not to an individual but to a class. This was established in *Fell* v. *Biddolph* (1875), L.R. 10 C.P. 701, and in *Re Coleman & Jarrom* (1876), 4 Ch. D. 165, a case not concerned with a legatee witnessing a will, Jessel, M.R., stated the rule against lapse in the case of class gifts in a perfectly general way in the following manner: "I think that the true rule is that those members of the class who are at the testator's death capable of taking, take, and that those who become incapable of taking—whether by dying in the testator's lifetime or by attesting the will, or by some other operation of law—do not take." On this view the testator's estate in *Re Peacock* was divisible in equal shares between the son and the step-son, the members of the class or group not incapable of taking, and Upjohn, J., so held.

No general rule

The decision is fairly and squarely within the observations of Jessel, M.R., in the earlier case (in so far as disqualification as the result of an occurrence beyond the testator's probable contemplation is concerned, what Jessel, M.R., said in that case was *dictum*). But the other possible conclusion, that as the wife had survived the testator there could be no question of her share lapsing, would not only have been nearer the facts of the case but would also have brought the decision nearer to that in *Re Callaway*; for on that footing the share which would have passed to the felon if she had not committed the act which deprived her of it would in either case have fallen to be dealt with as undisposed of by the testator. As it is, except for observing that as the Crown had expressly disclaimed any interest in the testator's estate as *bona vacantia*, the doubts which had assailed Vaisey, J., in *Re Callaway* could for the purposes of the case before him be banished, Upjohn, J., did not refer to the earlier case in his judgment. That is perhaps a pity, for the result of *Re Callaway* corresponded with the result to which Upjohn, J., himself inclined, apart from the authorities, and a similar decision in both cases would have gone some way to setting up a principle by which questions of this kind could be decided, of which there is at present no sign. In saying this, one must not of course forget that this kind of question has been before the courts very seldom, and that such authority as there is on the subject (reference to some cases can be found in the earlier article which I have mentioned) is not very helpful. But the decision in *Re Peacock* does nothing to establish any rule which can be applied without reference to the court in any case which is not precisely covered by the facts upon which the decision was given. In all other cases, an executor can obtain protection only by distributing the estate under an order of the court.

"A B C"

Landlord and Tenant Notebook

EVIDENCING INTENTION TO DEMOLISH

SINCE the coming into force of Pt. II of the Landlord and Tenant Act, 1954, the provision contained in s. 30 (1) (*f*) of that statute has been the subject of much judicial interpretation. The section deals with landlords' opposition to applications for new tenancies of business premises, and a landlord giving notice to terminate such a tenancy (no application for a new one having been made) must specify one of the grounds on which he would oppose such an application (s. 25 (6)). The ground provided by s. 30 (1) (*f*) is: "that on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding."

The courts have been called upon to decide when that intention must exist, i.e., whether at the date of the notice or later, and what qualities of fixity and genuineness it must possess. *Betty's Cafés, Ltd.* v. *Phillips Furnishing Stores, Ltd.* [1957] 2 All E.R. 223 is a report or note of the result of proceedings in which both questions were raised.

History

The history of the case may be divided into three phases. First, before any move required by the Act took place, a director of the respondent landlords obtained rough estimates for reconstructing the premises. The board then decided not to disturb the applicant tenants for five years unless the latter were prepared to vacate for a nominal consideration. Some two months later it decided to re-open negotiations, but rejected an offer made by the applicants for the purchase of the reversion. Thereupon the applicants served notice requesting a new tenancy. These things happened between the end of 1954 and 28th June, 1955.

The second phase began with the service of a notice of opposition by the respondents on 15th August, 1955. It stated as ground that the respondent company intended on the termination of the current tenancy to reconstruct the premises, etc., and could not reasonably do so without obtaining possession. On 25th November, 1955, the respondents' board considered an architect's report estimating the cost of reconstruction as being in the region of £15,000, and approved expenditure of that sum on that reconstruction. On 16th April, 1956, the hearing of the application was begun before Danckwerts, J., continuing on the 17th, 18th, 19th (reported [1956] 1 W.L.R. 678); at 10 a.m. on the 23rd April the respondents' board met and resolved that in the event of obtaining possession the work detailed in the architect's specification of January, 1955, be forthwith carried out, and that counsel appearing for the company in the application before the court be authorised to give an undertaking either to the court or to the applicants that the works would be carried out as soon as was practicable in the event of possession being obtained. The hearing continued that day and the next day, and on 7th May Danckwerts, J., delivered a reserved judgment in which he held that the date of service of notice of objection was the date at which the intention to reconstruct was required to have been formed, and that there was no evidence that it had then been formed. (A full discussion

of the decision will be found at 100 SOL. J. 695: " Proving a Company's Intention "; see also *ibid.*, 851.)

The third phase: on this question of date at which the intention must be shown to have existed, the respondent landlords appealed; and on 28th November, 1956, judgment was delivered in *Betty's Cafés, Ltd.* v. *Phillips Furnishing Stores, Ltd.* [1956] 3 W.L.R. 1134 (C.A.). It was held by a majority that the time of the judicial decision, not that of service of notice of objection, was the relevant time; and the case was remitted for trial of the question whether, having regard to the resolution, the landlords had established an intention with the requisite qualities of fixity and genuineness. (The dissenting judgment delivered by Evershed, M.R., was a very provocative one—for discussion, see p. 77, *ante*—and it may be regretted that the tenants did not follow the example of the landlord concerned in *Wheeler* v. *Mercer* [1956] 3 W.L.R. 841 (H.L.) and resort to the House of Lords.) The thus remitted action, *Betty's Cafés, Ltd.* v. *Phillips Furnishing Stores, Ltd.* [1957] 2 All E.R. 223, was tried on 4th April, 1957.

Genuineness and fixity

The contention advanced for the tenants was not that the landlords' resolution passed on 23rd April—after, Danckwerts, J., remarked, the case had been going for some days and it became apparent that they were in danger of losing it—was dishonest. But it was urged that the intention was not a genuine intention and that the element of fixity and certainty of purpose was lacking.

Genuineness: *Fisher* v. *Taylors Furnishing Stores, Ltd.* [1956] 2 Q.B. 78 decided that if a landlord really intends to carry out the work, his being impelled by the fact that unless prepared to do so he cannot obtain possession and defeat the claim for a new tenancy is not a valid objection; and the plans and specifications showed the sort of works which would be required to make the premises fit for the landlords' own business.

Fixity: by accepting the proffered undertaking, fixity could be assured, since the consequences of neglect or breach might involve sequestration of the landlord company's property and possibly committal of responsible directors to prison.

Danckwerts, J., held, accordingly, that the passing of the resolution was effective and that the tenant's application must fail.

Implications

What guidance does the decision afford?

It should be noted that *Fisher* v. *Taylors Furnishing Stores, Ltd.* did not, and was not said in itself to, conclude the matter. It merely disposed of any suggestion that the peculiar circumstance of being driven to pass the resolution negatived genuineness. The substantial consideration is whether, and not why, a landlord intends to demolish; examination of the reason why naturally may throw light on the issue whether; but the existence of more than one purpose is not fatal to a landlord's claim or answer, as the case may be.

Verisimilitude is, however, of importance. In other cases, where actual demolition was alleged to be intended, the dilapidated state or age of the demised premises has been of evidential value (see 100 SOL. J. 447): in the recent case importance was attached to the fact that what was said to be intended was what a landlord intending to convert a café into a furniture shop would want to do.

But the requirement of fixity raises the question: What happens if the landlord changes his mind? The eventuality was adverted to by Denning, L.J. (as he then was), in *Fisher* v. *Taylors Furnishing Stores, Ltd.*: " . . . the court must be satisfied . . . that it is a firm and settled intention, *not likely* to be changed. . . . It must be remembered that, if the landlord, having got possession, *honestly* changes his mind and does not do any work of reconstruction, the tenant has no remedy." There is no provision corresponding to that found in the Increase of Rent, etc., Restrictions Act, 1920, s. 5 (6): " where a landlord has obtained an order or judgment for possession or ejectment under this section on the ground that he requires a dwelling-house for his own occupation, and it is subsequently made to appear to the court that the order or judgment was obtained by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the former tenant such sum as appears sufficient as compensation, etc. "; but that subsection was not meant to, and does not, penalise a landlord who genuinely changes his mind: *Butler* v. *Langmead* (1947), 149 E.G. 135 (sale explained by damp). The position is, then, in my submission, that landlords relying on the Landlord and Tenant Act, 1954, s. 30 (1) (*f*), will not always have to offer security in the form of property and liberty; by " honestly," I would suggest Denning, L.J., meant to stipulate that the intention must be a new intention consistent with the old one having existed at the time.

R. B.

HERE AND THERE

TEACH YOURSELF

WE all know those little books on advocacy which, generation after generation, judges and retired " silks " are in the habit of publishing to impart (in a neat fifty pages or so) to the newly hatched barrister the whole art and mystery of honourable professional success, with particular reference to pleasing solicitors, winning cases and charming the truth out of witnesses. The attentive student is particularly instructed in the difficult technique of cross-examination and the even more elusive technique of examination-in-chief, which the beginner so often assumes to be a simple matter of running faithfully, sentence by sentence, through the proof in his brief. The line is neatly and authoritatively drawn between the permissible and the impermissible, the workable and the unworkable, in the various known devices for extracting from witnesses the answers which you would like them to give. If the art of cross-examination could be taught like drill from a drill-book (instead of being, as it is, an unanalysable blend of instinct, self-confidence and knowledge of men, women and the world), earnest students of these little books would enjoy overwhelming advantages in their duels with the uncoached amateurs in the witness-box. As it is, the advantage gained is not invariably overwhelming. All the same, it would obviously be fairer if coaching were available to both sides and it is rather surprising that, in the spate of frequently improbable " Do it yourself " and " Teach yourself " literature, no unemployed counsel has yet occupied his leisure days in compiling a little instructional work, " The Complete Witness or Teach Yourself to Give Evidence," including chapters on " How to make friends with the judge and influence him,"

"Teasing opposing counsel," "Truthful parries to awkward questions," and an appendix of a hundred witty answers, guaranteed untainted by contempt of court.

COURTMANSHIP FOR WITNESSES

IT is not every day that one comes across a fresh idea for a nice line in innocent awkwardness in the witness-box, since not every witness has the quicksilver genius of Sam Weller, but lately a man charged at Canterbury with driving under the influence of drink produced (no doubt quite undesignedly and spontaneously) what might in the mouth of *habitués* of the witness-box become a very effective gambit of "courtmanship." When he was asked his age and date of birth, he answered: "It was the year F. H. Woolley got 327 at Canterbury. I think it was 23rd May, 1912. Look it up." Of course, an industrious reporter did look it up and discovered from Wisden that Woolley's highest score in a first-class match was 305 not out at Hobart in the 1911–12 season. Now a witness who managed to establish that he had no head for figures or dates, and that his memory worked entirely by association of events, could slow down the swiftest cross-examination. "When did you last see your father?" "Oh, that would be on the day that old Lloyd George made a six-hour speech at Glamorgan on National Insurance. Look it up." "When did you hear your grandmother had changed her will?" "It must have been on the day the six law students painted Epstein's Rima green in Hyde Park. Look it up." "When did the co-respondent first write to you." "On the day of the world première of Marilyn Monroe's The Seven Year Itch. Look it up." Faced with such a technique in a case in which exact dates were vital, counsel would have to come into court armed with the Annual Register, Burke's Peerage, Whitaker's Almanack and every work of reference available. The element of surprise would be essential, so the method would have to be used sparingly.

CAUSE AND EFFECT

ONE would not think that the laws of cause and effect were being very attentively regarded if a local authority were to raise funds for its road safety campaign by a gala showing of a film epic of the speed track or if a Mistress of Novices in a nunnery were to make Brantôme's "Les Femmes Galantes" compulsory reading for her charges, or if the commanding officer of a regiment on the eve of going into battle were to arrange for his men to make a detailed tour of the more horrifying sections of a military hospital. And yet consciousness of cause and effect seems hardly to have been more closely considered in that curious incident recently revealed at the Dorchester Assizes when two youths received four-year sentences as a sequel to a violent escape from the Portland Borstal Institution. They had broken ranks during a route march, slashed the warder in charge with a razor blade and attacked and robbed civilians who chased them. In their own picturesque idiom, they "planned to chivvy a screw and scarper." The assizes were the sequel to the escape and the escape was the sequel to a film show at the institution the previous day. Of all available entertainments for the edification of incarcerated youth, the choice had fallen on "The Colditz Story," a war-time escape film. Inspired and exhilarated by the gallant example set before them, the two youths lost no time in going and doing likewise. The company which has been producing the St. Trinian's films must now redouble its efforts, keeping even closer to Ronald Searle's horrific originals of battle, murder, torture and calculated subversion in the classroom. The results would make pleasant lighthearted entertainment for other Borstal institutions and the Ministry of Education might even be interested in them for general exhibition in all schools.

RICHARD ROE.

TALKING "SHOP"

May, 1957.

TUESDAY, 7TH

We are supplied with a fresh engrossment of a Land Registry transfer and are asked by the purchaser's solicitors to submit it for execution by our clients. This with apologies, but the original has suffered "an unfortunate accident" in their office. A request for further and better particulars would seem to betray overmuch curiosity, so I must content myself with speculation. The possibilities seem endless. Did the kettle blow up, or the boss? Was it burnt to a cinder by a cigarette or merely flooded with tea (perhaps with whisky or gin)? Has it been sent to Scotland Yard so that the fingerprints of the murderer may be examined and recorded? If so, were there human as well as documentary victims? Is it possible that the typist thought fit to eat her own words and is now suffering acute indigestion? Such was the common practice of young ladies of a bygone age when detected with their *billets-doux*. I remember being much impressed, as a small boy, by the family portrait of a Miss *X*, who nobly swallowed a love-letter rather than relinquish it to her choleric father. I do not clearly remember whether it was—in the postal as distinct from the ingestive sense—part of the incoming or the outgoing mail.

FRIDAY, 10TH

Recently a reader kindly supplied me with some information which he thought might be used in one of "Escrow's divagations," adding a few well-merited strictures upon Escrow's spelling of Jodhpur (I hope I have it right now). The information was used, and I trust with such discretion as to satisfy him. Very occasionally readers do write to me, and letters not for publication will always be forwarded by the editorial office. With this issue I find that I have been "divagating" for five years in these columns, and this gives me the opportunity to thank those readers who at various times have written to me with suggestions and often with encouragement. I should be pleased to hear from others.

THURSDAY, 16TH

I wonder whether we do not spend too much of our time upon the thankless task of expanding well-recognised legal conceptions to a fullness of expression for others to deflate. The thought is suggested to me by a novel form of lease which came into the office the other day. The identity and obligations of the parties were set out in an intelligible way under suitable headings such as Parties, Property, Term, Rent, Tenant's Covenants, Landlord's Covenants, etc. I

thought it was a marked improvement upon the cumbersome and antediluvian system to which we have submitted for so long—demise, parcels, grants, reservations, habendum and reddendum, all in one compound clause with no rest or break.

If the matter be reviewed free from authority and precedent, it must be obvious that there is a colossal waste of effort in these processes of translation and re-translation. Lawyer *A* starts, let us say, with a quarto page of notes, which he cleverly expands to seven or eight pages of foolscap, draft or brief. Some years later lawyer *B* "peruses" the document and condenses it to a quarto page of notes. If *A* was skilful and *B* is not too exacting, there is likely to be a close correspondence between the two quarto sheets. Failing that, there is always room for a family arrangement, recourse to counsel's chambers or an originating summons.

Now, as I see it, we have long since recognised in principle the merits of conventional legal shorthand, but the process should be carried much further. The term "Beneficial Owner," in a conveyance for value, implies certain covenants for title; so with "Settlor," "Trustee," etc. We are well accustomed to the hermaphroditic conceit of the Interpretation Act that the masculine includes the feminine and all such verbal jugglery. Some draftsmen, indeed, after a lapse of some thirty years, are at last beginning to use the Statutory Will Forms prescribed by the Lord Chancellor under s. 179 of the Law of Property Act, 1925 (though why so many of them persist in defining personal chattels by reference to s. 55 (1) (*x*) of the Administration of Estates Act, 1925, and ignore the Lord Chancellor's form defies explanation). The principle, therefore, is not new.

What we need, I suggest, is a new Interpretation Act or a new and authorised set of statutory forms prescribing standard clauses of various types in common use. I look forward to the day when it will be possible to write "The statutory charging clause shall apply," or "The spouses and the survivor of them shall have the statutory powers of appointment subject only to the following variations . . ." A long and useful list of common-form precedents could be sanctioned in this manner to the relief of conveyancers and their clerks and typists, whose time would be better devoted to the "substance of the transaction" than to servile imitation of the same standard forms over and over again.

It is an odd thing that it is the simplest objects or elements that are the most difficult to define. How does one define the colour blue to a man blind from birth? Or Mozart to the deaf? Or either to a person with all faculties? It is easier to define a solicitors' charging clause than a table. The Concise Oxford Dictionary defines a table as "an article of furniture consisting of flat top of wood or marble, etc., and one or more usually vertical supports, especially one on which meals are laid out, articles of use or ornament kept, work done or games played." Compare this with "chryselephantine" which means "overlaid with gold and ivory as by ancient Greek sculptors." It is to be hoped that in course of time, and with some assistance by our legislators, methods of drafting will become less elephantine and more chryselephantine.

"ESCROW"

BOOKS RECEIVED

Current Law Year Book, 1956, and **Current Law Citator, 1947-56.** General Editor: JOHN BURKE, Barrister-at-Law. Year Book Editor: CLIFFORD WALSH, LL.M., Solicitor of the Supreme Court. Assistant General Editor: PETER ALLSOP, M.A., Barrister-at-Law. pp. 794 (Citator only). 1957. London: Sweet & Maxwell, Ltd., Stevens & Sons, Ltd. £4 4s. net. (Two volumes).

"Current Law" Income Tax Acts Service [CLITAS]. Release 39: 6th May, 1957. London: Sweet & Maxwell, Ltd., Stevens & Sons, Ltd. Edinburgh: W. Green & Son.

Supplement 1957 to Stephen's Commentaries on the Laws of England, twenty-first edition. pp. 104. 1957. London: Butterworth & Co. (Publishers), Ltd. 7s. 6d. net.

"Taxation" Key to Income Tax. Budget Edition, 1957. Edited by RONALD STAPLES. pp. 223. 1957. London: Taxation Publishing Co., Ltd. 10s. net.

The Law of Copyright. By J. P. EDDY, One of Her Majesty's Counsel. With the Copyright Act, 1956, annotated by E. ROYDHOUSE, LL.B., of Gray's Inn, Barrister-at-Law, and with Texts of Conventions. Reprinted from Butterworths Annotated Legislation Service. pp. xvii and (with Index) 356. 1957. London: Butterworth & Co. (Publishers), Ltd. £1 15s. net.

Nationality and Citizenship Laws of The Commonwealth and of The Republic of Ireland. By CLIVE PARRY, M.A., LL.B., of Gray's Inn, Barrister-at-Law. pp. liv and (with Index) 1021. 1957. London: Stevens & Sons, Ltd. £6 6s. net.

REVIEWS

The Law of Copyright. By J. P. EDDY, one of Her Majesty's Counsel. Reprinted from Butterworth's Annotated Legislation Service. 1957. London: Butterworth & Co. (Publishers), Ltd. £1 15s. net.

This book is in two parts. The first part contains a general statement of the effect of the new Copyright Act, 1956, which was passed on 5th November, 1956, and is about to be brought operation by order of the Board of Trade. The second part into prints the new Act as annotated by Mr. E. Roydhouse, LL.B., Barrister-at-Law.

The first part follows substantially the order of the sections of the new Act and appears primarily designed to inform the reader of the reasons which have brought about the modification of the law introduced by this Act. The method generally adopted in dealing with each group of sections is first of all to summarise the existing law on the subject, then to set forth in some detail the proposals with regard thereto made by the 1951 Copyright Committee, including the reasons set out in their report for making such proposals in relation to the particular subject-matter, thirdly, to set out any relevant discussion which may have taken place in Parliament in the course of the passage of the Bill and, finally, to set out the provisions actually appearing in the Act in relation to the subject-matter in question. The result is to produce an admirably clear presentation of the intention of the new Act.

The only possible criticism of this method of presentation is that by emphasising matters which influenced the passing of the legislation but are not open to the courts in interpreting it, the reader may suppose that the new Act is easier to construe than in fact it is. The Act uses different language from the Act of 1911 even in provisions where it may be supposed to have been intended to say the same thing, and some of the new

provisions, for example, those distinguishing the right of performance, of broadcasting, and of radio-diffusion (s. 48 (3) and (5)) require close attention. An Act of this complexity, when interpreted by the courts, may well produce unforeseen results. An example of this is referred to in the Report of the Copyright Committee itself when dealing with the *Carwardine* decision; as is stated in the report, it was not until 1933, twenty-two years after the passing of the Act of 1911, that any gramophone company sought to test by legal action whether or not the provision of s. 19 included a "performing" right in a record; such a right was not apparently one contemplated by the 1909 Copyright Committee; nevertheless, as a result of that decision a right of great importance came to be created. However, for the general reader it is invaluable to be able to ascertain what may be intended by the many complex provisions of the new Act.

The annotations of the Copyright Act not only give cross-references to other relevant sections but cite relevant authorities on the construction of similar provisions in the Act of 1911.

The Brussels and Universal Conventions are set out in the Appendix and valuable information is contained in Pt. VIII with regard to the copyright in Commonwealth and other countries. The precise conditions under which foreign authors will be entitled to United Kingdom copyright cannot be determined until Orders in Council are issued under the new Act.

The Sale of Flats. By EDWARD F. GEORGE, LL.B., Solicitor of the Supreme Court. 1957. London: Sweet & Maxwell, Ltd. £1 5s. net.

A number of text-books have been published recently whose objects are to explain in considerable detail the law and practice of comparatively narrow subjects. This development is not surprising in view of the increasing complexity not only of legal concepts but also of financial, and particularly taxation, problems. The disposal of flats is a very suitable subject for such a book. Although most of the important rules are adequately discussed in text-books dealing with the law of real property and conveyancing, there is much value in a text which gathers them together and draws attention to practical problems. Few writers have attempted to do this, although a number of helpful magazine articles have been written, and there is a relevant passage in the latest (14th) edition of Emmet on Title.

The descriptive text of this book occupies seventy-one pages and contains chapters entitled Preliminary Matters for Consideration; Income Tax; Sale of Maisonettes; Transfer or Lease of Flat; The Lift and Services; The Management and the Management Company; Finance; The Contract and Completion. It will be noted that the classification is very different from those adopted in books relating to sale of land or the law of landlord and tenant. That difference is the mark of the practical approach of the author to the substantial problems of a developer who constructs or adapts flats and of a purchaser or lessee.

Precedents prepared by the author and by E. H. Scamell, LL.M., Barrister-at-Law, J. A. R. Finlay, Barrister-at-Law, and J. C. Hicks, LL.M., Solicitor, occupy an Appendix of approximately 105 pages. Together they constitute the most satisfactory collection of forms of contract, lease, transfer and other documents we have seen. A further Appendix (12 pp.) contains a discussion of the economics of the conversion of old dwellings by C. Bernard Brown, L.R.I.B.A.

Although the preface is dated January, 1957, the author has been able to insert brief references to *Halsall* v. *Brizell* [1957] 2 W.L.R. 123, at pp. 33 and 35 of his text. Possibly if he has more time to study the implications of this decision the author may conclude that it can be applied widely as a means of rendering positive covenants enforceable against subsequent purchasers in connection with the types of transaction he discusses. It is convenient to note also that the author's discussion of the liability for Sched. A tax on lease of a flat in consideration of a premium (p. 20 *et seq.*) is likely to become out of date shortly if the Finance Bill carries out the Chancellor's proposal of placing the burden on the tenant.

Notes on District Registry Practice and Procedure. Tenth edition. By THOMAS STANWORTH HUMPHREYS. 1957. London: The Solicitors' Law Stationery Society, Ltd. 13s. 6d. net.

Handbooks on procedure very quickly become outdated on important matters of detail in these formative days of the new deal for litigants. The busy practitioner is never wise to make do with any but the latest edition. This new issue of Mr. Humphreys' book is right up to date, and those who have used its predecessors will need little urging to add it to their shelves, or, better still, to their desk-libraries. As a handy guide to practice in District Registries—the bulk, after all, of important litigation as practised over most of the country—these notes have quite established themselves, so that the omission of the former laudatory Foreword must have seemed to the publishers a natural step to take. The wine recommends itself without the bush.

Many users have learned to appreciate, in particular, the frequent references in the book to the pages of this journal where practice notes and articles afford fuller texts and explanations. The author has thereby saved valuable space for further notes. (Perhaps he might, in future editions, economise still more without loss by avoiding the duplication of the tables of fixed costs.) Again, we are impressed with the practical nature of the guidance given. With its abundance of cross-references to the rules and to the precedent books it forms a useful working index, with a merit most unusual in an ordinary index—the tricky bits are explained.

Police Law. Fourteenth Edition. By CECIL C. H. MORIARTY, C.B.E., LL.D. 1957. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

This book is primarily designed for the use of police officers and the new edition has been compiled to take account of the changes in the law since the last edition in 1954. Twenty-two new statutes have been noted and an appendix deals with the law relating to visiting forces. The practitioner will not find the book to be sufficiently detailed to serve as a text-book but it will be most useful on occasions to a solicitor with a wide general practice, to town clerks and to prosecuting solicitors for the lead it gives on finding the law on obscure subjects such as street and house collections, game dealers, explosives, wild birds, theatrical employees, and many of the other matters on which Parliament has legislated.

Stone's Justices Manual. Eighty-ninth Edition. By JAMES WHITESIDE, O.B.E., Solicitor, Clerk to the Justices for the City and County of the City of Exeter, and J. P. WILSON, Solicitor, Clerk to the Justices for the County Borough of Sunderland. Two volumes. 1957. London: Butterworth and Co. (Publishers), Ltd.; Shaw & Sons, Ltd. Thin Edition, £4 15s. net; Thick Edition, £4 10s. net.

There was no lack of legislation affecting magistrates' courts last year, and new statutes incorporated in full or in part in the new edition of Stone include the Road Traffic Act, 1956, the Sexual Offences Act, 1956, the Family Allowances and National Insurance Act, 1956, the Small Lotteries and Gaming Act, 1956, the Therapeutic Substances Act, 1956, the Occasional Licences and Young Persons Act, 1956, the Magistrates' Courts (Appeals from Binding Over Orders) Act, 1956, the Agriculture (Safety, Health and Welfare Provisions) Act, 1956, the Restrictive Trade Practices Act, 1956, and the Clean Air Act, 1956. Case law is brought up to date and amendments to a number of statutory instruments have been incorporated.

Two summer courses in law will be held at the City of London College, Moorgate, E.C.2, from 15th July to 9th August, 1957, namely: (1) a course in English law and comparative law; and (2) a course in international law. The former course is divided into two study groups: the syllabus of study-group A is designed for those who wish to acquire a knowledge of modern English law; the syllabus of study-group B includes subjects of particular interest to those who have some knowledge of Anglo-American common law. The course in international law includes topics of International Mercantile Law, Private and Public International Law. The courses, which are under the direction of Dr. Clive M. Schmitthoff, are arranged for lawyers and law students from overseas but are likewise suitable for English students preparing for the study of law. Prospectuses of both courses can be obtained from the Secretary, The City of London College, Moorgate, E.C.2.

NOTES OF CASES

The Notes of Cases in this issue are published by arrrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Court of Appeal

MENTAL DEFICIENCY: LEGALITY OF DETENTION ORDER: "FOUND NEGLECTED"

Richardson *v.* London County Council and Others

Denning, Parker and Sellers, L.JJ. 16th April, 1957

Appeals from Havers, J.

In January, 1925, the applicant, who was then twenty years of age, was at the request of his mother, with whom he was living, and who asserted that he was beyond her control, placed in the St. Mary Abbott's Hospital by the London County Council, as a place of safety, the council purporting to act under s. 15 (1) of the Mental Deficiency Act, 1913. Shortly afterwards, on a petition signed by the mother (the father being in India) and supported by two doctors, an order was made by a judicial authority under which the applicant was transferred to a home, the mother being responsible for the cost of his maintenance. Later, the father having died and the mother being unable to maintain him, the applicant was temporarily placed by the Middlesex County Council in an institution at Brentford, until in October, 1925, an order was made by the Board of Control committing him to the Rampton Institution as a person of dangerous propensities. He remained there until 1954, when he was released. He now sought leave under s. 16 (2) of the Mental Treatment Act, 1930, to bring actions against the two county councils and the Board of Control claiming damages. It was contended that the mother was not the parent whose signature to the petition was required by the statutes; that the applicant was not a person found neglected, and that the order made by the judicial authority was made without jurisdiction. Havers, J., refused leave to proceed against the county councils, but granted leave to proceed against the Board of Control. The applicant now appealed and the Board of Control brought a counter-appeal.

DENNING, L.J., said that on behalf of the applicant it was contended that there was no justification for the suggestion that he was "found neglected," and that there must have been a want of reasonable care, at least, on the part of the London County Council; and that there might even have been bad faith, in that they may have realised that it was doubtful whether they had any power in law to detain him, but nevertheless, in order to support the mother's wishes, they took a chance on it and found him "neglected" when he was not so in fact. The court ought not to look at the case in the light of the decision in *R.* v. *Board of Control; ex parte Rutty* [1956] 2 Q.B. 109, but as the law stood in 1925. At that time the courts were not disposed to give such a narrow construction to the word "neglected" as they had since done in *Rutty's* case. Looking at the words apart from authority, a reasonable person might hold that a feeble-minded person was "neglected" if he was not given the care which he ought to have, or was not under the control which he ought to be under, both for his own good and for the good of others. If his parents and relatives could not give him the care and control which he ought to have, then the responsibility fell on the rest of the community and, unless and until they did something about it, he was neglected, not by his parents, but by the community at large. In the circumstances, there was reasonable ground for holding him to be found neglected. The second complaint arose from the conduct of the judicial authority who made the detention order. It was based on s. 6 (3) of the Act of 1913, which provided that, if an order was to be made, it was not to be made without the consent in writing of "the parent"; and it was said in this case that, as the mother was the petitioner, the "parent" concerned was the father, and his consent ought to have been obtained. This was the ground on which the judge gave leave for an action to be brought against the Board of Control. In his lordship's opinion, when the father was unavoidably away so that his consent could not be obtained within any reasonable period of time, the consent of the mother was sufficient, even though she was the one who made the petition. In those circumstances, there was no ground for the contention that there was any want of reasonable care or any bad faith in the Board of Control in not insisting upon the father's consent. There was no ground for allowing the applicant to bring an action against the Middlesex County Council, and, in the circumstances, there was no ground for suggesting that the Board of Control were wanting in reasonable care in the steps they took to have the applicant removed to Rampton Institution. Therefore the appeal would be dismissed in the case of the London County Council and the Middlesex County Council and allowed in the case of the Board of Control.

PARKER, L.J., agreeing, said that it seemed clear that, but for *Rutty's* case, and the law as expounded there, these proceedings would never have been heard of, because until *Rutty's* case it was thought generally that the words "found neglected" in s. 2 (1) (*b*), and again in s. 15, should be given a wide construction.

SELLERS, L.J., agreed. Appeal dismissed. Cross-appeal allowed.

APPEARANCES: *John Thompson*, Q.C., and *John Platts-Mills* (*Robert K. George*); *F. H. Lawton* (*J. G. Barr*); *J. G. Wilmers* (*Kenneth Goodacre*); *Sir Harry Hylton-Foster*, Q.C., S.-G., and *Rodger Winn* (*Solicitor, Ministry of Health*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 751**

NON-EXERCISE OF SPECIAL POWER OF APPOINTMENT BY GENERAL WORDS IN WILL

In re Knight, deceased; In re Wynn, deceased; Midland Bank Executor and Trustee Co., Ltd., and Another *v.* Parker and Others

Lord Evershed, M.R., Hodson and Romer, L.JJ.

16th April, 1957

Appeal from Danckwerts, J.

Mrs. L. M. Wynn, by her will, made in 1951, gave her residuary estate on trust for sale and directed her trustees to stand possessed of the residue of the proceeds after payment of expenses on trust for a daughter and for the children of a deceased son and a daughter in specified shares. The residuary estate was expressed as "including any property over which I may have any power of disposition at the date of my death." Under the terms of the will of the testatrix's father, Frederick Knight, she had a special power of appointment of a share of the residue of her father's estate amongst a class of objects which included all the persons who were beneficially entitled to her own residuary estate. The class of objects did not include her trustees. In 1921, on the occasion of the marriage of her second daughter, Mrs. Parker, she made an appointment in favour of that daughter, subject to her own life interest and to that of her mother. She died in 1955 and the trustees of her father's will, who were also her own trustees, took out a summons in the Chancery Division asking whether the general words in her will operated as an exercise of the special power conferred by her father's will. Having regard to a hotchpot clause applicable to an unappointed share of any child of Mrs. Wynn in whose favour an appointment had been already made, the effect of holding that the power was exercised by the will would be that the Parker stirpes would take a larger share than if the power were not so exercised. Danckwerts, J., held that the words in the will had exercised the special power. The first daughter of the testatrix and the executrix of her deceased son appealed.

LORD EVERSHED, M.R., delivering a reserved judgment of the court, said that, as Romer, L.J., had said in *In re Hayes* [1901] 2 Ch. 529, the question whether a testator had shown an intention to exercise a special power had to be answered by reference to the whole will. The context of this will indicated that the testatrix had in mind not every limited power that she might have at her death, but only any relevant power, that is any power which would enable her to bring into and make part of her general and residuary estate property not strictly her own. There were indications in the will which overrode the circumstance that the beneficiaries happened to be objects of the

special power, a circumstance to which much weight should not be attached in this case, as they were the natural objects of the testatrix's bounty. In several of the cases cited (*In re Swinburne* (1884), 27 Ch. D. 696; *In re Teape's Trusts* (1873), L.R. 16 Eq. 442; *In re Boyd* (1890), 63 L.T. 92; *In re Mayhew* [1901] 1 Ch. 677; and *In re Welford* [1946] 1 All E.R. 23) the decision that a special power had been exercised appeared to have been influenced by the view that the only alternative to so holding would have involved giving no meaning to the general phrases there in question. It was doubtful whether that argument was valid, for, notwithstanding the effect of s. 27 of the Wills Act, 1837, the terms of a general power might be such that an effective exercise required that express reference should be made to it. Appeal allowed.

APPEARANCES: *Charles Russell*, Q.C., and *Bower Alcock* (*Tuck & Mann*, for *Wallace, Robinson & Morgan*, Birmingham); *R. W. Goff*, Q.C., and *M. M. Wheeler* (*Peake & Co.*, for *Harold Gee & Williams*, Bristol); *S. W. Templeman* (*E. B. V. Christian & Co.*, for *Scott & Richards*, Teignmouth).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[2 W.L.R. 987**

Queen's Bench Division

SHIPPING: " WEATHER WORKING DAYS "

Compania Naviera Azuero S.A. *v.* British Oil & Cake Mills, Ltd., and Others

Pearson, J. 8th April, 1957

Action.

A charterparty for the carriage of grain in bulk provided: " Cargo to be received at destination at an average rate of not less than 1,000 tons per weather working day (Sundays and holidays excepted) provided vessel can deliver at such rate . . . " and by a further clause: " laydays in loading and discharging to be calculated on the basis of twenty-four hours per day." During the period of unloading there were certain times when rain fell which was heavy enough to stop or prevent unloading operations, if such operations had been started or intended, but in fact the receivers' arrangements were such that no work of unloading was being done during those periods nor was it intended that any work would have been done even if they had been periods of fine weather. The owners of the vessel brought an action for demurrage against the charterers claiming that deductions were to be made in calculating laytime in respect of periods of rain occurring during the running of the laydays only in the event and to the extent that such periods of rain in fact served to prevent the work of discharging the cargo.

PEARSON, J., said that in his view a correct definition of a " weather working day " was a day on which the weather permitted the relevant work to be done, whether or not any person availed himself of that permission; in other words, so far as the weather was concerned, it was a working day. Also, the converse proposition must be on the same basis. A day failed to be a weather working day in so far as the weather on that day did not permit the relevant work to be done, and it was not material to inquire whether any person had intended or planned or prepared to do any relevant work on that day. The status of a day as being a weather working day, wholly or in part or not at all, was determined solely by its own weather, and not by extraneous factors, such as the action, intentions and plans of any person. Judgment for the charterers.

APPEARANCES: *Ashton Roskill*, Q.C., and *Basil Eckersley* (*Constant & Constant*); *Eustace Roskill*, Q.C., and *R. A. MacCrindle* (*Richards, Butler & Co.*)

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[2 W.L.R. 997**

Court of Criminal Appeal

LIVING ON EARNINGS OF PROSTITUTION: ROOM LET AT INFLATED RENT

R. *v.* Thomas

Lord Goddard, C.J., Hilbery and Stable, JJ. 1st April, 1957

Application for leave to appeal against conviction.

At the trial of a defendant on a charge of knowingly living wholly or in part on the earnings of prostitution contrary to s. 1 (1) of the Vagrancy Act, 1898, there was evidence for the prosecution that the defendant, after a certain amount of bargaining, made an arrangement with a woman, whom he knew to be a prostitute, that she should have the use of a room in a house, which he rented, between the hours of 9 p.m. and 2 a.m., the prostitute paying him £3 a night for the use of the room, and that he knew that her purpose in securing the use of the room was to bring her clients there, as she in fact did. At the conclusion of the case for the prosecution counsel for the defence, relying on the direction given to the jury in *R.* v. *Silver* [1956] 1 W.L.R. 281, submitted that there was no case to answer. Pilcher, J., said that if there was evidence that a defendant had let a room or a flat at a grossly inflated rent to a prostitute for the express purpose of allowing her to ply her immoral trade there it was for the jury to determine on the facts of each particular case whether the defendant was in fact knowingly living wholly or in part on the earnings of prostitution. A person who acted in such a fashion was acting, as it were, as a coadjutor of the prostitute and was in quite a different position from a shopkeeper, doctor or person performing services to a prostitute in the ordinary way, and he, his lordship, proposed to direct the jury on those lines and not in the fashion in which they were directed in *R.* v. *Silver*. The jury, having been directed accordingly, convicted the defendant, who applied for leave to appeal against conviction.

STABLE, J., said that in the opinion of the court the direction of Pilcher, J., was right, and the observations in *R.* v. *Silver*, so far as they conflicted with those of Pilcher, J., in the present case, were wrong. It was a perfectly plain case and there was no question but that the defendant was living wholly or in part on immoral earnings. Application dismissed.

APPEARANCES: [At the Central Criminal Court] *Victor Durand* (*Solicitor, Metropolitan Police*); *H. Grannum* (*Nehra, Emerson, Naylor & Co.*) (The defendant did not appear and was not represented in the Court of Criminal Appeal).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[1 W.L.R. 747**

NON-CAPITAL MURDER: APPLICATION TO APPEAL AGAINST SENTENCE NOT RECEIVABLE

Practice Direction

Lord Goddard, C.J., Hilbery and Devlin, JJ. 13th May, 1957

LORD GODDARD, C.J., said that an application for leave to appeal against sentence of life imprisonment imposed under s. 9 of the Homicide Act, 1957, for non-capital murder could not be received because s. 3 (*c*) of the Criminal Appeal Act, 1907, provided that a person might appeal against a sentence " unless the sentence is one fixed by law." The sentence for non-capital murder was now fixed by law by the Homicide Act, 1957, therefore the notice could not be accepted. Further, in the past all applications for leave to appeal in capital cases were treated as final appeals and put in the list as such. The prosecution was represented so that, if the appeal were dismissed, the capital sentence would not be postponed. Now, in all cases of non-capital murder, applications for leave to appeal against conviction would be treated in the ordinary way. They would be listed simply as applications and the prosecution need not be represented unless leave to appeal was given.

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 750**

The Rt. Hon. Lord Kilmuir, Lord High Chancellor of Great Britain, presided over the UNITED LAW CLERKS' SOCIETY'S anniversary dinner, which was held on 4th April at the Connaught Rooms, London. The toast of " The Society " was proposed by the Lord Chancellor and the following were among the other distinguished guests: Lord and Lady Morton, Lord and Lady Cohen, Mr. Justice Collingwood, Mr. Justice Upjohn and Lady Upjohn, Mr. Milner Holland, C.B.E., Q.C., vice-chairman of the Bar Council, Sir Edwin Herbert, K.B.E., President of The Law Society, and Miss Rose Heilbron, Q.C.

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

Affiliation Proceedings Bill [H.L.] [14th May.

To consolidate the enactments relating to bastardy, with corrections and improvements made under the Consolidation of Enactments (Procedure) Act, 1949.

Maintenance Agreements Bill [H.C.] [14th May.

Read Second Time:—

Export Guarantees Bill [H.C.] [16th May.
House of Commons Members' Fund Bill [H.C.] [16th May.
National Insurance Bill [H.C.] [16th May.
New Streets Act, 1951 (Amendment) Bill [H.C.] [16th May.
Tyne Improvement Bill [H.L.] [16th May.

Read Third Time:—

City of London (Various Powers) Bill [H.C.] [14th May.
London County Council (General Powers) Bill [H.L.] [15th May.
Marine Society Bill [H.C.] [14th May.
Shops Bill [H.L.] [16th May.

In Committee:—

Rent Bill [H.C.] [14th May.

HOUSE OF COMMONS

PROGRESS OF BILLS

Read First Time:—

Doncaster Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [14th May.

To confirm a Provisional Order made by the Minister of Transport and Civil Aviation under the Doncaster Corporation Act, 1926, relating to Doncaster Corporation trolley vehicles.

Reading Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [14th May.

To confirm a Provisional Order made by the Minister of Transport and Civil Aviation under the Reading Corporation Act, 1935, relating to Reading Corporation trolley vehicles.

STATUTORY INSTRUMENTS

Act of Sederunt (Rules of Court Amendment), 1957. (S.I. 1957 No. 807 (S. 42).)
Dunchurch By-Pass, Special Road Scheme, 1957. (S.I. 1957 No. 790.) 5d.
Eggs (Amendment) Order, 1957. (S.I. 1957 No. 802.) 5d.
Exchange Control (Payments) (Egyptian Monetary Area) Order, 1957. (S.I. 1957 No. 819.) 5d.
Import Duties (Drawback) (No. 8) Order, 1957. (S.I. 1957 No. 784.) 5d.
Import Duties (Exemptions) (No. 5) Order, 1957. (S.I. 1957 No. 785.) 5d.
London-Edinburgh-Thurso Trunk Road (Tempsford Diversion) Order, 1957. (S.I. 1957 No. 779.) 5d.
London-Edinburgh-Thurso Trunk Road (Wyboston Diversion) Order, 1957. (S.I. 1957 No. 769.) 5d.
London-Fishguard Trunk Road (Baglan Road, Port Talbot, Diversion) Order, 1957. (S.I. 1957 No. 797.) 5d.
London-Holyhead Trunk Road (Dunchurch By-Pass) (Revocation) Order, 1957. (S.I. 1957 No. 789.)
London Traffic (Prescribed Routes) (Harrow) Regulations, 1957. (S.I. 1957 No. 821.)
London Traffic (Prescribed Routes) (Redhill, Reigate) Regulations, 1957. (S.I. 1957 No. 791.)
London Traffic (Prohibition of Waiting) (Walton and Weybridge) Regulations, 1957. (S.I. 1957 No. 792.) 5d.
Motor Fuel (Revocation) Order, 1957. (S.I. 1957 No. 835.)
Draft **Motor Vehicles** (International Circulation) Order, 1957. 11d.
National Health Service (Superannuation) (England and Scotland) (Amendment) Regulations, 1957. (S.I. 1957 No. 788.) 5d.
Parking Meters (Description and Testing) (England and Wales) Order, 1957. (S.I. 1957 No. 822.) 7d.
Stopping up of Highways (City and County Borough of Birmingham) (No. 1) Order, 1957. (S.I. 1957 No. 770.) 5d.
Stopping up of Highways (City and County Borough of Birmingham) (No. 2) Order, 1957. (S.I. 1957 No. 771.) 5d.
Stopping up of Highways (County of Essex) (No. 5) Order, 1957. (S.I. 1957 No. 778.) 5d.
Stopping up of Highways (County of Essex) (No. 6) Order, 1957. (S.I. 1957 No. 813.) 5d.
Stopping up of Highways (County of Essex) (No. 7) Order, 1957. (S.I. 1957 No. 809.) 5d.
Stopping up of Highways (County of Essex) (No. 8) Order, 1957. (S.I. 1957 No. 803.) 5d.
Stopping up of Highways (County of Hertford) (No. 5) Order, 1957. (S.I. 1957 No. 795.) 5d.
Stopping up of Highways (London) (No. 31) Order, 1957. (S.I. 1957 No. 804.) 5d.
Stopping up of Highways (London) (No. 32) Order, 1957. (S.I. 1957 No. 814.) 5d.
Stopping up of Highways (County of Northampton) (No. 4) Order, 1957. (S.I. 1957 No. 796.) 5d.
Stopping up of Highways (County of Northampton) (No. 5) Order, 1957. (S.I. 1957 No. 815.) 5d.
Stopping up of Highways (County of West Sussex) (No. 1) Order, 1957. (S.I. 1957 No. 810.) 5d.
Stopping up of Highways (Worcestershire) (No. 4) Order, 1957. (S.I. 1957 No. 780.) 5d.
Therapeutic Substances (Control of Sale and Supply) Regulations, 1957. (S.I. 1957 No. 798.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

OBITUARY

MR. A. C. DOWDING

Mr. Arthur Charles Dowding, solicitor, of Gray's Inn Square, London, W.C.1, Sydenham, London, S.E.26, and Orpington, Kent, died on 5th May, aged 76. He was admitted in 1906.

MR. E. M. GOVER

Mr. Ernest Martin Gover, solicitor, of Wallington, Coulsdon, Croydon, and Cannon Street, London, E.C.4, died on 9th May, aged 71. He was admitted in 1905.

MR. J. D. HEALY

Mr. John Daniel Healy, solicitor, of Blackburn, Lancashire, died recently. He was admitted in 1902.

HIS HONOUR JUDGE JENKINS

His Honour Judge Jenkins, Q.C., died on 10th May in Pembrokeshire. He was chairman of Somerset Quarter Sessions and until his retirement last month County Court Judge on Circuit No. 52. He was admitted a solicitor in 1907 and called to the Bar in 1914.

MR. H. A. WHATELY

Mr. Henry Arthur Whately, a retired London solicitor, of Mitford Castle, Bath, died on 2nd May, aged 102. He was admitted in 1881.

MR. A. H. WILD

Mr. Arthur Herbert Wild, solicitor, of Cambridge, died on 4th May. A past president of the Cambridge and District Law Society, he was admitted in 1920.

NOTES AND NEWS

Honours and Appointments

Mr. J. C. BLAKE has been appointed solicitor and legal adviser to the Ministry of Health in succession to Mr. B. O'Brien, who will be retiring on 13th October. Mr. Blake will also act as solicitor and legal adviser to the Ministry of Housing and Local Government.

Mr. J. J. M. LAVOIPIERRE, Substitute Procureur and Advocate-General, Mauritius, has been appointed Puisne Judge, Mauritius.

Mr. JOHN MIDDLEHURST has been appointed assistant solicitor to Accrington Corporation.

Personal Notes

Mr. Norman Primhak, solicitor, of Bury Place, London, W.C.1, was married on 28th April at Golders Green to Miss Ann Joseph, of Hampstead Way.

Miscellaneous

SALFORD DEVELOPMENT PLAN APPROVED

The Minister of Housing and Local Government has approved with modifications the development plan for the County Borough of Salford. The plan, as approved, will be deposited in the Town Hall, Salford, for inspection by the public.

DEVELOPMENT PLANS

ADMINISTRATIVE COUNTY OF LONDON DEVELOPMENT PLAN

On 22nd March, 1957, the Minister of Housing and Local Government amended the above development plan. A certified copy of the plan as amended by the Minister has been deposited at The County Hall, Westminster Bridge, S.E.1 (Room 311A), and certified copies of the plan as amended or certified extracts thereof so far as the amendment relates to the under-mentioned district have also been deposited at the place mentioned below :—

District.—Metropolitan Borough of Battersea (at Mill Pond Wharf and Middle Wharf, Nine Elms Lane).

Place.—Battersea Town Hall, Lavender Hill, S.W.11.

The copies or extracts of the plan, so deposited, will be open for inspection free of charge by all persons interested between the hours of 10 a.m. and 4 p.m. Monday to Friday, 10 a.m. and 12 noon Saturday. The amendment became operative as from 10th May, 1957, but if any person aggrieved by it desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the making of the amendment, he may, within six weeks from 10th May, 1957, make application to the High Court.

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District.—Metropolitan Borough of Poplar (in the area East India Dock Road—Blair Street—Aberfeldy Street).

Place.—Poplar Town Hall, Bow Road, E.3.

The copies or extracts of the plan, so deposited, will be open for inspection free of charge by all persons interested between the hours of 10 a.m. and 4 p.m. Monday to Friday, 10 a.m. and 12 noon Saturday. The amendment became operative as from 10th May, 1957, but if any person aggrieved by it desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the making of the amendment, he may, within six weeks from 10th May, 1957, make application to the High Court.

Wills and Bequests

Mr. H. E. Major, solicitor, of Maidenhead, Berks, left £39,769 net.

Mr. Robert Pollock, solicitor, of Essex Street, Strand, W.C.2, left £14,070 (£13,866 net).

Mr. Adrian Jerome Smith Jerome, solicitor, of Newport, Isle of Wight, left £29,656 (£29,526 net).

Mr. Reginald William Smith, solicitor, of Middlesbrough, left £39,796.

Mr. William Gough-Thomas, solicitor, of Ashgrove, Welshampton, left £17,870 (£16,668 net).

SOCIETIES

The SOLICITORS' ARTICLED CLERKS' SOCIETY announces the following programme for June: 6th June: Scottish Reels. At The Law Society's Hall, at 6.30 p.m. 11th June: Any Questions. At the Law Society's Hall, at 6.30 p.m. Members are invited to put their own questions to an unprepared panel. 18th June: New Members' Evening. At The Law Society's Hall, at 6.30 p.m. The president, Mr. Bryan Gammon, will give a talk on "The Solicitors' Articled Clerks' Society." 21st June: Swimming Party. Meet at 6.30 p.m., at Dolphin Square. 27th June: Tennis Evening.

PRINCIPAL ARTICLES APPEARING IN VOL. 101

6th April to 25th May, 1957

For list of articles published up to and including 30th March, see *ante*, p. 288.

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JUNE 1, 1957

THE

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CURRENT TOPICS

You Can't Take It with You

IT is unusual for a question to come before the courts on which there is apparently no authority whatever. A few days ago the LORD CHIEF JUSTICE had to decide whether the administrators of a dead man upon whom a sentence involving the payment of a fine had been imposed were liable to pay the fine out of the deceased's estate, the deceased having failed to pay the fine in his lifetime. At first sight his decision that the estate was liable appears somewhat hard. It can be argued cogently that a penalty for committing a criminal offence is designed to punish the offender and that once the offender is dead punishment ceases to have any effect. On the other hand, it is difficult to argue convincingly that those entitled to succeed to the estate of a deceased man should be in a better position if the deceased fails to carry out his obligations than if he does. We admit that our first thoughts were that the administrators should not pay but on reflection we have reached the conclusion, albeit somewhat unsteadily, that we agree with the Lord Chief Justice.

Contempt from Abroad

THERE is some uneasiness about the liability of the importers and distributors of printed matter coming from abroad which contains something which amounts to contempt of court (cf. *R.* v. *Griffiths and Others*; *ex parte A.-G.*, noted *post*, p. 447). It appears to us that the matter must be treated with a large admixture of common sense, and there appears to be a close analogy with the sellers of food, who are placed under an absolute liability by the criminal law if they sell food which is, among other things, unfit for human consumption. No amount of evidence that they have taken every possible precaution will excuse them if unfit food is sold, and the object of the Food and Drugs Act is to encourage the sellers of food to take stringent precautions, although in practice no one expects that every single article of food shall be minutely examined before sale. Likewise, the speedy and free distribution of publications from abroad makes it impracticable for each to be "read for contempt" before being allowed to appear on the bookstalls. The ability of the court to reflect blame in the penalty imposed should be a sufficient safeguard against injustice, and we feel that the fears which have been expressed by the importers and distributors of foreign publications are exaggerated. Let them by all means take reasonable precautions, but we see no need to overdo them.

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